IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 961 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANAJI HARIJI THAKORE

Versus

ADDITIONAL DEVELOPMENT COMMISSIONER

Appearance:

MR PANKAJ K SONI for the Petitioner.

Ms. D.S.Pandit, ASSTT. GOVERNMENT PLEADER for Respondent No. 1.

MR HS MUNSHAW for Respondent No. 2

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 30/01/2002

ORAL JUDGEMENT

This is a petition for quashing and setting aside the order dated 1.9.1998 passed by the

District Development Officer, Mahesana and the order dated 29.12.1998 passed by the Aditional Development Commissioner, Gandhinagar and for cancelling the show cause notice dated 21.8.1998 issued by the District Development Officer, Mahesana and further for a direction to the respondent authorities to permit the petitioner to work as Sarpanch of the village.

2. The petitioner is an elected Sarpanch of village Panchayat, Sonva, Ta: Kadi. He was also a member of Doodh Utpadak Sahakari Mandli and was elected as President of the said Mandali. One Manilal Ramdas Patel who was contesting against the petitioner gave a threat to the staff of the society, hence, the petitioner filed a complaint against Manilal Ramdas Patel before District Registrar, Co-operative Societies. He also filed a complaint before Bavlu police station against Thakor Takhaji Shivaji and others in the month of October, 1997. Manilal Ramdas Patel who was contesting against the petitioner in the election of the President of the Mandali and some other person had cut Nilgiri trees on 22nd April, 1998. Hence, the petitioner filed a complaint before Kadi Taluka Mamlatdar. Manilal Ramdas Patel and some other 26 persons made a plan to commit murder of the petitioner. Therefore, the petitioner filed a complaint before Bavlu police station on 2.5.1998 against Manilal Rambhai Patel and 26 other persons. Manillal Ramas Patel alongwith other persons had tried to see the removal of the petitioner as Sarpanch by hook or crook, and so one Bhadreshbhai Kashiram Patel who is said to be a close relative of Manilal Patel filed a criminal complaint against the petitioner and others on 17.8.1998 before Bavalu police station. The said criminal case was registered as I cr. No. 69 of 1998. Thereupon, Police Officer, Bavlu arrested the petitioner and had taken him in judicial custody. Thereafter, the petitioner was released on bail on 30th September, 1998. One third party sent an application to the District Development Officer stating therein that one Bhadreshbhai Kashiram Patel has lodged a criminal complaint against the petitioner, therefore, action under section 59 of the Gujarat Panchayat Act, 1993 should be taken against the petitioner. On the basis of that application, the District Development Officer initiated proceedings against the petitioner under section 59 of the Act for suspening the petitioner from the post of Sarpanch of village Sonvad. The District Development Officer issued a show cause notice dated 21st August, 1998 to the petitioner. The said notice could not be served upon the petitioner as the petitioner was in jail. Without giving an opportunity of hearing, the District Development

Officer passed an ex parte order suspending the petitioner from the post of Sarpanch vide his order dated 1.9.1998. Being aggrieved by the said order of the District Development Officer, the petitioner filed an appeal before Additional Development Commissioner. The Additional Development Commissioner has also rejected the petitioner's appeal and confirmed the order passed by the District Development Officer vide his order dated 29.12.1998. Therefore, the petitioner has filed the present petition challenging both the said orders.

3. Heard the learned advocates for the parties and perused the relevant papers on record.

4. The first contention of the learned counsel for the petitioner is that the show cause notice was not served upon the petitioner as, at the relevant time, he was in jail. Though his daughter remained present on 27.8.1998 and requested for issuance of fresh notice to the petitioner, neither time was granted nor fresh notice was issued to the petitioner while he was in jail. As such, the D.D.O. passed the order without giving an opportunity of being heard and in violation of the principles of natural justice. I have examined this contention. Under section 59(1) of the Gujarat Panchayats Act, 1993 (hereinafter referred to as the "Act"), the authority is not required to issue any notice or give an opportunity of hearing for passing an order of suspending a Sarpanch or Upa-Sarpanch. Amittedly, a case was registered against the petitioner for the offences punishable under sections 147, 148, 149, 323, 324, 325 and 504 of the Indian Police Station with Bavlu police station on 13.8.1989. The petitioner was arrested and was sent to jail and he was released on bail on 30.9.1989. Thus, it is an undisputed fact that the petitioner was involved in a criminal case and had remained in jail. The provisions of section 59(1) of the Act provide as under:

"9. Suspension of Sarpanch or Upa-Sarpanch :

(1) The District Development Officer may suspend from office the Sarpanch or the Upa-Sarpanch of a village panchayat against whom any criminal proceeings in respect of an offence involving moral turpitue have been instituted or who has been detained in a prison during trial for any offence or who is unergoing such sentence of imprisonment as would not disqualify him from continuing as a member of the panchayat under section 30 or who has been detained under any law relating to preventive detention for the time

being in force."

From the above provisions of section 59(1) of the Act, it appears that the Sarpanch or Upa-Sarpanch can be suspended by D.D.O. who has been detained in prison during trial for any offence. In the present case, the petitioner had remained in judicial custody for some time and lateron he was released on bail. Even if the offence punishable under Indian Penal Code may not amount to moral turpitude, but the requirement of the section is only that if Sarpanch or Upa-Sarpanch has been in jail during trial for any offence, the D.D.O. is perfectly justified in taking action of passing the order suspending such Sarpanch or Upa-Sarpanch. The provisions of section 59 do not contemplate for issuance of any notice or for giving an opportunity of hearing before passing the order of suspension. Still however, the show cause notice was sent to the petitioner and petitioner's daughter remained present before D.D.O. in response to the show cause notice. As such, the order passed by the D.D.O. suspending the petitioner from the office of Sarpanch does not suffer from any infirmity or illegality. Thus, the contention of the learned counsel for the petitioner is not tenable in the eye of law.

5. The next contention of the learned counsel for the petitioner is that in the notice dated 21.8.1998, it is mentioned that " As a complaint for offence involving moral turpitue is registered, why you should not be removed from the office of Sarpanch, Sonvad, Ta: Kadi as per section 59(3) of Gujarat Panchayats Act, 1993 ?" He also referred the order passed by the D.D.O. wherein it is mentioned " As complaint for the offence involving moral turpitude is registered, why you should not be remove from the office of Sarpanch, Sonvad, Ta: Kadi, as per section 59(3) of Gujarat Panchayats Act." He also referred from the order of the Additional Development Commissioner, Gujarat State wherein the words referred are "Manaji Hariji Thakor, Sarpanch, Gram Panchayat, Sonvad, Ta: Kadi is removed from the post of Sarpanch immediately under section 59(1) of Gujarat Panchayats Act for the involvement in the offence involving moral turpitude." The contention of the learned counsel for the petitioner is that the the notice was given for removal of the petitioner from the office of Sarpanch and the orders passed by the authorities are also in respect of the removal of the petitioner from the office of Sarpanch. The provisions of of section 59 refer to suspension of Sarpanch or Upa-Sarpanch, while section 57(1) of the Act refers to the removal of Sarpanch or Upa-Sarpanch or any member of the Panchayat.

The Act does not contemplate the third type of case wherein temporary removal is required. In the present case, temporary removal has been passed which is not contemplated under the provisions of law. Hence, the orders passed by the authorities are not sustainable in the eye of law.

I have also carefully considered this argument of the learned counsel for the petitioner. It is specifically mentioned that the notice and orders passed by the District Development Officer were passed under section 59(1) of the Gujarat Panchayats Act and that order has been confirmed by the appellate authority i.e. Additional Development Commissioner, State of Gujarat. Mere mention of wrong words in the notice or in orders of the D.D.O. does not vitiate legal proceedings against the petitioner. The intention of the authorities appears that the notice was given to the petitioner under section 59 of the Act for suspension from the office of Sarpanch and the proceedings were taken against him under section 59(1) of the Act, the orders were passed under section 59 of the Gujarat Panchayats Act only for the suspension of the petitioner from the office of Sarpanch and that order has been confirmed by the appellate authority. Even if wrong words have been used as "remove from the office of Sarpanch under section 59 of the Act would amount to only suspension or temporary removal does not mean that a separate category of cases has been made created by the authorities and the case of the petitioner does fall under that category. The provisions of law clearly intend the suspension of the petitioner from the office of Sarpanch. Thus, there is no substance in the contention of the learned counsel for the petitioner. Accoringly, this contention raised by the learned counsel for the petitioner is rejected.

6. The next contention of the learned counsel for the petitioner is that the proceedings taken against the petitioner are malafide one as there was an anmity between the petitioner and some person of the village who was contesting against the petitioner and he lost in the election and hence certain complaints were made by the petitioner and some complaints were made by that contestant. As criminal case was registered against the petitioner and the prosecuting agency found prima facie case against the petitioner, therefore, he was taken into custody and remained in jail. As such, according to him, the proceedings taken against the petitioner being malafide, will vitiate the orders passed by the authorities. I have considered this argument also. In my view, the contention of the learned counsel

for the petitioner is not tenable. Even if criminal case was instituted malafide, but the authority found some prima facie case against the petitioner and the petitioner was taken into custody. The detention of the petitioner in jail would be sufficient for passing an order of suspension under section 59(1) of the Act. The petitioner has availed of the remedy of appeal before the appellate authority and the appellate authority, after considering the entire material on record, has confirmed the order.

7. In the facts and circumstances of the case, I do not find any good reason calling for interference with the impugned orders. Accordingly, this petition is dismissed. Rule is discharged with no order as to costs. Interim relief, if any, stands vacated.

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